

Message

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**From:** payne.james@epa.gov [payne.james@epa.gov]  
**Sent:** 4/29/2021 1:37:12 PM  
**To:** Conrad, Daniel [conrad.daniel@epa.gov]  
**CC:** Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Engelman-Lado, Marianne [EngelmanLado.Marianne@epa.gov]  
**Subject:** Re: Press Inquiry--DDL noon 4/29: Biden ethics pledge waiver for Marianne Engelman-Lado

Hi all. This reads well to me.

Sent from my iPhone

On Apr 29, 2021, at 9:06 AM, Conrad, Daniel <conrad.daniel@epa.gov> wrote:

With Justina's help we've developed proposed responses to the below press inquiry in regard to Marianne's ethics waiver. I know you are both in and out today at best, Marianne and I conferred and thought it would be good for you all to at least have a chance to review prior to giving OPA the green light. We will also be getting OPA's thoughts as well. Note the noon today deadline. Thanks

-Dan

Hi Dan,

Please see the responses below:

- Is Engelman-Lado the first Biden political appointee at EPA to be given a waiver to President Biden's ethics pledge? That seems to be the case from the Office of Government Ethics' list of President Biden's ethics pledge waivers on their website but I wanted to check that with you (please see [https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+\(EO+13989\)](https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+(EO+13989))).

ANSWER: yes.

- Are any other Biden political appointees at EPA to be given a waiver to President Biden's ethics pledge? If so, who? And for what reasons?

ANSWER: The Designated Agency Ethics Official will evaluate each situation on a case-by-case basis and make the appropriate determination.

- Does EPA have any other comment on Engelman-Lado being given a waiver to President Biden's ethics pledge?

POSSIBLE ANSWER:

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308  
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004  
for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>  
**Sent:** Wednesday, April 28, 2021 5:21 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** Fwd: Press Inquiry--DDL noon 4/29: Biden ethics pledge waiver for Marianne Engelman-Lado

FYI imagine you may be able to assist here depending on how detailed a response we choose to give?  
Thanks  
-Dan

Begin forwarded message:

**From:** "Hackel, Angela" <[Hackel.Angela@epa.gov](mailto:Hackel.Angela@epa.gov)>  
**Date:** April 28, 2021 at 5:12:19 PM EDT  
**To:** "Conrad, Daniel" <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>  
**Subject:** Press Inquiry--DDL noon 4/29: Biden ethics pledge waiver for Marianne Engelman-Lado

Good afternoon Dan,

Please see the below. His ddl is noon tomorrow. Please let me know how OGC would like to respond.

Thanks,

Angela

Angela Hackel (she/her/hers)  
Senior Advisor  
Office of Public Affairs  
Office of the Administrator  
U.S. Environmental Protection Agency  
202.566.2977 (office)  
202.763.3945 (cell)

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**From:** Kevin Bogardus <[kbogardus@eenews.net](mailto:kbogardus@eenews.net)>  
**Sent:** Wednesday, April 28, 2021 4:25 PM  
**To:** Hamilton, Lindsay <[Hamilton.Lindsay@epa.gov](mailto:Hamilton.Lindsay@epa.gov)>; Press <[Press@epa.gov](mailto:Press@epa.gov)>  
**Subject:** Biden ethics pledge waiver for Marianne Engelman-Lado

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well.

I'm working on a story about Marianne Engelman-Lado being given a waiver to President Biden's ethics pledge so she can interact with Natural Resources Defense Council after she helped NRDC with some of their Freedom of Information Act requests to EPA before she came to EPA (please see [https://www.epa.gov/sites/production/files/2021-04/documents/biden\\_pledge\\_waiver\\_for\\_marianne\\_engelman-lado\\_as\\_to\\_nrdc\\_4\\_14\\_21\\_0.pdf](https://www.epa.gov/sites/production/files/2021-04/documents/biden_pledge_waiver_for_marianne_engelman-lado_as_to_nrdc_4_14_21_0.pdf)). I had a few questions about this, which are:

-- Is Engelman-Lado the first Biden political appointee at EPA to be given a waiver to President Biden's ethics pledge? That seems to be the case from the Office of Government Ethics' list of President Biden's ethics pledge waivers on their website but I wanted to check that with you (please see [https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+\(EO+13989\)](https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+(EO+13989))).

-- Are any other Biden political appointees at EPA to be given a waiver to President Biden's ethics pledge? If so, who? And for what reasons?

-- Does EPA have any other comment on Engelman-Lado being given a waiver to President Biden's ethics pledge?

Please get back to me as soon as possible. My deadline is noon ET Thursday, April 29, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at Ex. 6 Personal Privacy (PP) Thank you for your help and stay safe, stay healthy!

**Kevin Bogardus**

E&E News Reporter

[kbogardus@eenews.net](mailto:kbogardus@eenews.net)

202-446-0401 (o)

Ex. 6 Personal Privacy (PP) (c)

202-737-5299 (f)

Follow me [@KevinBogardus](https://twitter.com/KevinBogardus)

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**E&E News**

122 C Street, NW, Suite 722, Washington, DC 20001

[www.eenews.net](http://www.eenews.net)

Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

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**From:** Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]  
**Sent:** 4/14/2021 5:26:23 PM  
**To:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Subject:** RE: Touch base shortly?  
**Attachments:** Biden pledge waiver for Marianne Engelman-Lado as to NRDC.pdf

Digitally signed, attached.

Would like to distribute to OGC IO and ADDs, and RCs/DRCs. Feel free to distribute or I can - whatever you prefer.

-----Original Message-----

From: Fugh, Justina <Fugh.Justina@epa.gov>  
Sent: Wednesday, April 14, 2021 1:15 PM  
To: Payne, James (Jim) <payne.james@epa.gov>  
Subject: RE: Touch base shortly?

Here's that revision -- very sorry for not proofreading better -- for your digital signature. I would like to talk to you about nominees if you have time today.  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----

From: Payne, James (Jim) <payne.james@epa.gov>  
Sent: Wednesday, April 14, 2021 11:11 AM  
To: Fugh, Justina <Fugh.Justina@epa.gov>  
Subject: Touch base shortly?

Sent from my iPhone



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

### MEMORANDUM

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne **JAMES PAYNE**  
Deputy General Counsel for Environmental Media and Regional Law Offices,  
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Digitally signed by JAMES  
PAYNE

Date: 2021.04.14  
13:21:48 -04'00'

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former client, the National Resources Defense Council (NRDC), is a party or represents a party, provided that you did not previously participate personally and substantially in the matter with NRDC or any other party.

### BACKGROUND

On January 20, 2021, President Biden signed Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," which includes an Ethics Pledge. The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the "former client"<sup>1</sup> restriction at Section 1, paragraph 2:

*I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.*

You entered federal service at EPA effective January 31, 2021 and received your initial

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<sup>1</sup> A "former client" is defined as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Section 2(l).

ethics training on February 4, 2021, the same day you signed the Ethics Pledge. You have properly recused yourself from participating in any particular matter in which your former employers or any of your former clients is a party or represents a party. The EPA has identified, however, an interest in having you work on particular matters involving one of your former clients – namely, NRDC -- for which you will require a pledge waiver as set forth in Section 3 of Executive Order 13989. Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.<sup>2</sup>

## ANALYSIS

Your career has been devoted to civil rights and environmental justice. Prior to joining the Biden Administration, you directed an Environmental Justice (EJ) Clinic at Vermont Law School that trains students in community lawyering and civil rights enforcement in the environmental justice context, and also served as Lecturer at both the Yale University School of Public Health and the Yale School of the Environment, where you supervised interdisciplinary teams of law, environmental, and public health students working on climate justice issues.

Your experience also includes ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. You began your legal career as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where you represented clients attempting to break barriers of access to health care and quality education. You recently served as co-chair of the Equity and Environmental Justice Working Group of Connecticut's Governor's Council on Climate Change, and as a board member of both WE ACT for Environmental Justice and the Center for Public Representation. You have lectured widely and taught graduate, law, and undergraduate level courses. You also hold a B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University.

## PREVIOUS INVOLVEMENT IN FOIA CASES WITH NRDC

During the two-year period prior to your federal appointment, on behalf of the EJ Clinic you directed (first at Yale University and then at Vermont Law School), you and co-counsel Southern Environmental Law Center submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA). These FOIA requests were made on behalf of three client groups that included NRDC. This limited waiver applies only to NRDC.

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<sup>2</sup> See Office of Government Ethics Legal Advisory, LA-21-04 (Feb. 18, 2021).

The requests asked for information related to EPA's Title VI of the Civil Rights Act of 1964 (Title VI) docket, including complaints, acknowledgments, jurisdictional decisions, referrals and any dispositive decisions. Upon release of EPA's responsive records, the student team under your supervision reviewed the documents and discussed legal options in consultation with co-counsel and at the direction of the clients. Approximately four FOIA requests were submitted on behalf of these client groups, the first of which was in 2017 while you were at Yale University. You received no compensation specifically for this FOIA-related work that was distinct from your salary provided by your employers for running and supervising a clinic and serving as faculty. Although there were follow-up conversations with employees in EPA's External Civil Rights and Compliance Office (ECRCO) within the Office of General Counsel (OGC), they were limited to the FOIA response. There have been no legal challenges, appeals or litigation related to these FOIA requests.

#### YOUR OFFICIAL DUTIES ON BEHALF OF EPA

OGC serves as the chief legal advisor to the EPA Administrator and implements the nation's environmental laws. OGC also provides legal counsel to EPA policymakers and represents the Agency in court challenges to agency actions. In your position as Deputy General Counsel for Environmental Initiatives, you have responsibilities within OGC for the External Civil Rights Compliance Office, the Civil Rights and Finance Law Office, and the Pesticides and Toxic Substances Law Office (PTSLO). PTSLO is responsible for legal issues and related litigation for the Office of Chemical Safety and Pollution Prevention (OCSPP) in connection with OCSPP's regulatory efforts addressing pesticides and toxic chemicals governed respectively by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). Similarly, PTSLO also provides legal support for OCSPP related to the Pollution Prevention Act (PPA) and the Toxics Release Inventory (TRI), the program under the Emergency Planning and Community Right-To-Know Act (EPCRA) that informs citizens about toxic releases in their communities. NRDC is frequently involved in these regulatory areas and is often named as a party to the litigation that PTSLO addresses.

In the position of Deputy General Counsel for Environmental Initiatives, your participation in the review and direction of substantive environmental legal matters under FIFRA, TSCA, and TRI is critical to PTSLO's effectiveness in these areas. Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in PTSLO. Consequently, there is an overlap of recusals that is impinging the ability of OGC to interact with our political leadership in certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other OGC political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior involvement as an employee in a State government. Your restriction is due solely to prior service in discrete and limited situations that are unrelated to FIFRA, TSCA and TRI.

For the two years prior to your EPA appointment, the services you personally provided to NRDC were limited to those Title VI-related FOIA requests. You did not provide advice or counsel to NRDC or otherwise enter into an attorney-client relationship with them and received

no compensation from them. The nature of your previous affiliation with NRDC does not relate in any way to their involvement in non-Title VI matters, such as OCSPP litigation or regulatory actions, arising at EPA. During the time period relevant to Section 1, paragraph 2 of the Ethics Pledge, you had no involvement on behalf of NRDC with the types of litigation PTSLO handles.

## CONCLUSION

In your position as the Deputy General Counsel for Environmental Initiatives, you must be able to advise senior leadership, including the Administrator, and provide legal counsel and vital input into the Agency's programs and litigations that address pesticides and toxic chemicals. Your prior involvements with NRDC was limited in scope and focused only on a handful of FOIA requests.

For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

This limited waiver encompasses any such specific party matters arising at EPA where NRDC is a party or represents a party, and you did not previously participate personally and substantially while serving as an attorney for them or any other party. You are allowed to participate in those specific party matters, including meetings or communications relating to your official duties, where NRDC is present. However, you will remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, as well as your own attorney bar obligations.

cc: Dana Remus, Counsel to the President

Message

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**From:** Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]  
**Sent:** 4/14/2021 10:23:20 PM  
**To:** Engelman-Lado, Marianne [EngelmanLado.Marianne@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]  
**CC:** Packard, Elise [Packard.Elise@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]  
**Subject:** Pledge waiver  
**Attachments:** Biden pledge waiver for Marianne Engelman-Lado as to NRDC.pdf

Attaching signed Biden Pledge waiver as to Marianne and NRDC. White House concurred. Justina plans to circulate it and arrange to post it on agency webpage per this WH's standard procedures for pledge waivers.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

### MEMORANDUM

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne **JAMES PAYNE**  
Deputy General Counsel for Environmental Media and Regional Law Offices,  
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Digitally signed by JAMES  
PAYNE  
Date: 2021.04.14  
13:21:48 -04'00'

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For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

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cc: Dana Remus, Counsel to the President

Message

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**From:** Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]  
**Sent:** 2/8/2021 2:04:46 PM  
**To:** Fugh, Justina [Fugh.Justina@epa.gov]; Engelman-Lado, Marianne [EngelmanLado.Marianne@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]  
**Subject:** Fwd: Recusals for Marianne

Thanks Justina. Adding Marianne and others.

Sent from my iPhone

Begin forwarded message:

**From:** "Payne, James (Jim)" <payne.james@epa.gov>  
**Date:** February 8, 2021 at 7:34:07 AM EST  
**To:** "Engelman-Lado, Marianne" <EngelmanLado.Marianne@epa.gov>  
**Subject:** Fwd: Recusals for Marianne

Sent from my iPhone

Begin forwarded message:

**From:** "Fugh, Justina" <Fugh.Justina@epa.gov>  
**Date:** February 7, 2021 at 11:08:59 PM EST  
**To:** "Dorka, Lilian" <Dorka.Lilian@epa.gov>, "Cole, Joseph E." <cole.josephe@epa.gov>, "Talbert-Duarte, Angelia" <talbert-duarte.angelia@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>  
**Cc:** "Rhines, Dale" <rhines.dale@epa.gov>, "Kaczmarek, Chris" <Kaczmarek.Chris@epa.gov>, "Goerke, Ariadne" <Goerke.Ariadne@epa.gov>, "Clarke, Victoria" <clarke.victoria@epa.gov>  
**Subject:** Recusals for Marianne

Hi there,

We understand that Marianne Engelman-Lado will be the Deputy General Counsel working closely with your offices. She will have certain recusal issues that will be documented in a recusal statement. Typically, though, we don't draft a recusal statement for a principal until s/he submits the public financial disclosure. So Victoria and I thought to give you a heads up.

Marianne is bound by her bar rules from sharing the confidences of former clients and from switching sides in litigation in which she previously participated or for which she provided supervision. We have identified one case that is currently pending at EPA from which she is recused for the entirety of her tenure at EPA:

- ♦ *Californians for Renewable Energy v. EPA*, case no. 4:15-cv-03292-SBA, N.D. Cal., an APA case regarding Title VI complaints and Agency's failure to meet regulatory deadlines.

Do not brief her on this case nor include it in any of your briefing material to her.

As a political appointee, Marianne is subject to additional recusal obligations with respect to her former employers and her former clients over the past two years. We have identified the following entities as her former employers: Vermont Law School, Yale University, and the Poverty & Race Research Action Council. Under Section 2 of the Biden Ethics Pledge, Marianne is prohibited from working on specific party matters (e.g., litigation, contracts, grants, speaking engagements) in which any of these former employers is a party or represents a party. She may not attend any meetings or have any communications with a former employer unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. This recusal period for these former employers ends after January 31, 2023.

She will be similarly restricted in working on specific party matters with any of her former clients over the past two years. Victoria is working with Marianne to generate that list, which may end up including additional cases for her recusal list. Until we know the names of those clients, the best we can do is provide you with this logic tree:

- 1) Review the list of cases from which Marianne is recused. As of right now, that list is just one case: *Californians for Renewable Energy v. EPA*, case no. 4:15-cv-03292-SBA, N.D. Cal., an APA case regarding Title VI complaints and Agency's failure to meet regulatory deadlines.
  - a. If the case is on her list, then do not discuss with her
  - b. If the case is not on her list, proceed to step 2.
- 2) Look to see if any of her former employers (i.e., Vermont Law School, Yale University, and Poverty & Race Research Action Council) or former clients (to be determined) is a party or intervenor
  - a. If yes, then do not discuss with that principal
  - b. If no, then you may discuss with that principal.
- 3) If the former employer or former client files an *amicus* brief, then
  - a. Ascertain whether Marianne worked on that brief.
    - i. <!--[if !supportLists]--><!--[endif]-->If yes, then do not discuss
    - ii. <!--[if !supportLists]--><!--[endif]-->If not, then do not discuss that brief with Marianne until after January 31, 2023

If you have any questions about these general recusal areas, then please contact Victoria Clarke or me.

Justina

Message

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**From:** Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]  
**Sent:** 4/6/2021 1:29:43 AM  
**To:** Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Engelman-Lado, Marianne [EngelmanLado.Marianne@epa.gov]  
**Subject:** FW: Pledge Waiver -- from EPA for Marianne Engelman-Lado  
**Attachments:** request for pledge waiver for Marianne Engelman-Lado\_.docx

FYI, this draft pledge waiver is in review at White House.

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**From:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Sent:** Friday, April 2, 2021 3:58 PM  
**To:** ethics Ex. 6 Personal Privacy (PP)  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>  
**Subject:** Pledge Waiver -- from EPA for Marianne Engelman-Lado

Hi there,

My name is Justina Fugh, and I'm the ADAEO at EPA. On behalf of EPA and Jim Payne, the Designated Agency Ethics Official, I am writing to request consultation on the attached pledge waiver for Marianne Engelman-Lado, a political appointee in the Office of General Counsel. Ms. Engelman-Lado had previously worked, in a limited scope, with the Natural Resources Defense Council, on a handful of FOIA requests. Although NRDC technically meets the definition of a "former client" for the purposes of Section 1, paragraph 2 of Executive Order 13989, EPA seeks a waiver on her behalf to further a public interest.

As you will see from the attached document, Ms. Engelman-Lado's previous interaction with NRDC was limited to FOIA requests sent to EPA in the context of Title VI of the Civil Rights Act. We seek to allow her to participate in specific party matters arising under environmental statutes, such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). We understand that, if you concur, we will need to post this waiver on the Agency's website within 10 business days and to notify the Office of Government Ethics.

If you have any questions regarding this waiver, please let me know.  
Thank you for your prompt consideration,  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

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**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 4/14/2021 5:14:59 PM  
**To:** Payne, James (Jim) [payne.james@epa.gov]  
**Subject:** RE: Touch base shortly?  
**Attachments:** request for pledge waiver for Marianne Engelman-Lado for signature.pdf

Here's that revision -- very sorry for not proofreading better -- for your digital signature. I would like to talk to you about nominees if you have time today.  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308  
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use  
20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----

From: Payne, James (Jim) <payne.james@epa.gov>  
Sent: Wednesday, April 14, 2021 11:11 AM  
To: Fugh, Justina <Fugh.Justina@epa.gov>  
Subject: Touch base shortly?

Sent from my iPhone



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

### **MEMORANDUM**

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne  
Deputy General Counsel for Environmental Media and Regional Law Offices,  
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former client, the National Resources Defense Council (NRDC), is a party or represents a party, provided that you did not previously participate personally and substantially in the matter with NRDC or any other party.

### BACKGROUND

On January 20, 2021, President Biden signed Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," which includes an Ethics Pledge. The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the "former client"<sup>1</sup> restriction at Section 1, paragraph 2:

*I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.*

You entered federal service at EPA effective January 31, 2021 and received your initial

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<sup>1</sup> A "former client" is defined as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Section 2(l).

ethics training on February 4, 2021, the same day you signed the Ethics Pledge. You have properly recused yourself from participating in any particular matter in which your former employers or any of your former clients is a party or represents a party. The EPA has identified, however, an interest in having you work on particular matters involving one of your former clients – namely, NRDC -- for which you will require a pledge waiver as set forth in Section 3 of Executive Order 13989. Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.<sup>2</sup>

## ANALYSIS

Your career has been devoted to civil rights and environmental justice. Prior to joining the Biden Administration, you directed an Environmental Justice (EJ) Clinic at Vermont Law School that trains students in community lawyering and civil rights enforcement in the environmental justice context, and also served as Lecturer at both the Yale University School of Public Health and the Yale School of the Environment, where you supervised interdisciplinary teams of law, environmental, and public health students working on climate justice issues.

Your experience also includes ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. You began your legal career as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where you represented clients attempting to break barriers of access to health care and quality education. You recently served as co-chair of the Equity and Environmental Justice Working Group of Connecticut's Governor's Council on Climate Change, and as a board member of both WE ACT for Environmental Justice and the Center for Public Representation. You have lectured widely and taught graduate, law, and undergraduate level courses. You also hold a B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University.

## PREVIOUS INVOLVEMENT IN FOIA CASES WITH NRDC

During the two-year period prior to your federal appointment, on behalf of the EJ Clinic you directed (first at Yale University and then at Vermont Law School), you and co-counsel Southern Environmental Law Center submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA). These FOIA requests were made on behalf of three client groups that included NRDC. This limited waiver applies only to NRDC.

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<sup>2</sup> See Office of Government Ethics Legal Advisory, LA-21-04 (Feb. 18, 2021).

The requests asked for information related to EPA's Title VI of the Civil Rights Act of 1964 (Title VI) docket, including complaints, acknowledgments, jurisdictional decisions, referrals and any dispositive decisions. Upon release of EPA's responsive records, the student team under your supervision reviewed the documents and discussed legal options in consultation with co-counsel and at the direction of the clients. Approximately four FOIA requests were submitted on behalf of these client groups, the first of which was in 2017 while you were at Yale University. You received no compensation specifically for this FOIA-related work that was distinct from your salary provided by your employers for running and supervising a clinic and serving as faculty. Although there were follow-up conversations with employees in EPA's External Civil Rights and Compliance Office (ECRCO) within the Office of General Counsel (OGC), they were limited to the FOIA response. There have been no legal challenges, appeals or litigation related to these FOIA requests.

#### YOUR OFFICIAL DUTIES ON BEHALF OF EPA

OGC serves as the chief legal advisor to the EPA Administrator and implements the nation's environmental laws. OGC also provides legal counsel to EPA policymakers and represents the Agency in court challenges to agency actions. In your position as Deputy General Counsel for Environmental Initiatives, you have responsibilities within OGC for the External Civil Rights Compliance Office, the Civil Rights and Finance Law Office, and the Pesticides and Toxic Substances Law Office (PTSLO). PTSLO is responsible for legal issues and related litigation for the Office of Chemical Safety and Pollution Prevention (OCSPP) in connection with OCSPP's regulatory efforts addressing pesticides and toxic chemicals governed respectively by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). Similarly, PTSLO also provides legal support for OCSPP related to the Pollution Prevention Act (PPA) and the Toxics Release Inventory (TRI), the program under the Emergency Planning and Community Right-To-Know Act (EPCRA) that informs citizens about toxic releases in their communities. NRDC is frequently involved in these regulatory areas and is often named as a party to the litigation that PTSLO addresses.

In the position of Deputy General Counsel for Environmental Initiatives, your participation in the review and direction of substantive environmental legal matters under FIFRA, TSCA, and TRI is critical to PTSLO's effectiveness in these areas. Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in PTSLO. Consequently, there is an overlap of recusals that is impinging the ability of OGC to interact with our political leadership in certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other OGC political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior involvement as an employee in a State government. Your restriction is due solely to prior service in discrete and limited situations that are unrelated to FIFRA, TSCA and TRI.

For the two years prior to your EPA appointment, the services you personally provided to NRDC were limited to those Title VI-related FOIA requests. You did not provide advice or counsel to NRDC or otherwise enter into an attorney-client relationship with them and received

no compensation from them. The nature of your previous affiliation with NRDC does not relate in any way to their involvement in non-Title VI matters, such as OCSPP litigation or regulatory actions, arising at EPA. During the time period relevant to Section 1, paragraph 2 of the Ethics Pledge, you had no involvement on behalf of NRDC with the types of litigation PTSLO handles.

## CONCLUSION

In your position as the Deputy General Counsel for Environmental Initiatives, you must be able to advise senior leadership, including the Administrator, and provide legal counsel and vital input into the Agency's programs and litigations that address pesticides and toxic chemicals. Your prior involvements with NRDC was limited in scope and focused only on a handful of FOIA requests.

For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

This limited waiver encompasses any such specific party matters arising at EPA where NRDC is a party or represents a party, and you did not previously participate personally and substantially while serving as an attorney for them or any other party. You are allowed to participate in those specific party matters, including meetings or communications relating to your official duties, where NRDC is present. However, you will remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, as well as your own attorney bar obligations.

cc: Dana Remus, Counsel to the President

Message

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**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 4/14/2021 5:55:10 PM  
**To:** Payne, James (Jim) [payne.james@epa.gov]  
**Subject:** RE: Touch base shortly?

Hi,  
Thanks for signing and I'll distribute to Marianne and, per your request, to the people you've identified. I just tried to call you via Teams so please call me when you are free.  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----

From: Payne, James (Jim) <payne.james@epa.gov>  
Sent: Wednesday, April 14, 2021 1:35 PM  
To: Fugh, Justina <Fugh.Justina@epa.gov>  
Subject: Re: Touch base shortly?

And could talk in 15 min or so

Sent from my iPhone

> On Apr 14, 2021, at 1:26 PM, Payne, James (Jim) <payne.james@epa.gov> wrote:

>

> Digitally signed, attached.

>

> would like to distribute to OGC IO and ADDs, and RCs/DRCs. Feel free to distribute or I can - whatever you prefer.

>

>

> -----Original Message-----

> From: Fugh, Justina <Fugh.Justina@epa.gov>  
> Sent: Wednesday, April 14, 2021 1:15 PM  
> To: Payne, James (Jim) <payne.james@epa.gov>  
> Subject: RE: Touch base shortly?

>

> Here's that revision -- very sorry for not proofreading better -- for your digital signature. I would like to talk to you about nominees if you have time today.

> Justina

>

> Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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> -----Original Message-----

> From: Payne, James (Jim) <payne.james@epa.gov>  
> Sent: Wednesday, April 14, 2021 11:11 AM  
> To: Fugh, Justina <Fugh.Justina@epa.gov>  
> Subject: Touch base shortly?

>

>

>

> Sent from my iPhone

> <Biden pledge waiver for Marianne Engelman-Lado as to NRDC.pdf>

Message

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**From:** Olorunnipa, Funmi B. EOP/WHO **Ex. 6 Personal Privacy (PP)**  
**Sent:** 4/14/2021 1:55:37 AM  
**To:** Fugh, Justina [Fugh.Justina@epa.gov]  
**CC:** Payne, James (Jim) [payne.james@epa.gov]  
**Subject:** Re: Gentle nudge: Pledge Waiver -- from EPA for Marianne Engelman-Lado

Hi Justina,

Thanks for checking in. I just heard back this evening and this pledge waiver has been approved. As a reminder it should cc Dana Remus, Counsel to the President and be made available to the public (usually through posting on the agency website) within 10 days of issuance and the link where it can be found should be sent to OGE so they can make it available on their website as well.

Thanks !

Funmi

On Apr 13, 2021, at 9:40 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Funmi,  
May I inquire as to when we might hear back about this pledge waiver?  
Thanks!  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308  
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004  
for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Olorunnipa, Funmi B. EOP/WHO <**Ex. 6 Personal Privacy (PP)**>  
**Sent:** Tuesday, April 06, 2021 2:56 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>  
**Subject:** RE: Pledge Waiver -- from EPA for Marianne Engelman-Lado

Hi Justina,

Thanks for sending this along, I hope to get back to you by end of this week.

Thanks,

Funmi

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**From:** MBX WHO Ethics  
**Sent:** Monday, April 5, 2021 2:39 PM

**To:** Olorunnipa, Funmi B. EOP/WHO <[REDACTED]>  
**Subject:** FW: Pledge Waiver -- from EPA for Marianne Engelman-Lado

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**From:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Sent:** Friday, April 2, 2021 3:58 PM  
**To:** MBX WHO Ethics; [REDACTED]  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>  
**Subject:** Pledge Waiver -- from EPA for Marianne Engelman-Lado

Hi there,

My name is Justina Fugh, and I'm the ADAEO at EPA. On behalf of EPA and Jim Payne, the Designated Agency Ethics Official, I am writing to request consultation on the attached pledge waiver for Marianne Engelman-Lado, a political appointee in the Office of General Counsel. Ms. Engelman-Lado had previously worked, in a limited scope, with the Natural Resources Defense Council, on a handful of FOIA requests. Although NRDC technically meets the definition of a "former client" for the purposes of Section 1, paragraph 2 of Executive Order 13989, EPA seeks a waiver on her behalf to further a public interest.

As you will see from the attached document, Ms. Engelman-Lado's previous interaction with NRDC was limited to FOIA requests sent to EPA in the context of Title VI of the Civil Rights Act. We seek to allow her to participate in specific party matters arising under environmental statutes, such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). We understand that, if you concur, we will need to post this waiver on the Agency's website within 10 business days and to notify the Office of Government Ethics.

If you have any questions regarding this waiver, please let me know.  
Thank you for your prompt consideration,  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308  
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004  
for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

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**From:** Hoffer, Melissa [Hoffer.Melissa@epa.gov]  
**Sent:** 3/1/2021 3:12:27 PM  
**To:** Engelman-Lado, Marianne [EngelmanLado.Marianne@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]  
**Subject:** RE: Recusal from Flint

Confirming receipt. Thank you.

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**From:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>  
**Sent:** Monday, March 1, 2021 9:42 AM  
**To:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>  
**Subject:** Recusal from Flint

I am, indeed, recused from the Flint litigation for 2 years. FYI.

Best,

Marianne

## Challenges to Waters of the United States and Section 401 Rules to which Massachusetts is not a Party

### WOTUS Cases

- ***Am. Exploration & Mining Ass'n v. EPA***, No. 16-01279 (D.D.C.) (challenge to 2015 Clean Water Rule)
- ***Chesapeake Bay Found. v. Wheeler***, Nos. 20-01063 & 20-01064 (D. Md.) (consolidated cases challenging Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***Colorado v. EPA***, No. 20-01461 (D. Colo.) (challenge to Navigable Waters Protection Rule)<sup>1</sup>
- ***Conservation Law Found. v. EPA***, No. 20-10820 (D. Mass.) (challenge to Navigable Waters Protection Rule) note that Mass. filed amicus brief
- ***Env'tl. Integrity Project v. Wheeler***, No. 20-01734 (D.D.C.) (challenge to Navigable Waters Protection Rule)
- ***Murray v. Wheeler***, No. 19-01498 (N.D.N.Y.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***Navajo Nation v. Wheeler***, No. 20-00602 (D.N.M.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***N.M. Cattle Growers' Ass'n v. EPA***, No. 19-00988 (D.N.M.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***North Dakota v. EPA***, No. 15-00059 (D.N.D.) (challenge to 2015 Clean Water Rule)
- ***Ohio v. Corps***, No. 15-02467 (S.D. Ohio) (challenge to 2015 Clean Water Rule)
- ***Or. Cattlemen's Ass'n v. EPA***, No. 19-00564 (D. Or.) (challenge to Navigable Waters Protection Rule & 2015 Clean Water Rule)
- ***Pascua Yaqui Tribe v. EPA***, No. 20-00266 (D. Ariz.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***Pierce v. EPA***, No. 19-02193 (D. Minn.) (challenge to 2019 Repeal Rule & 2015 Clean Water Rule)
- ***Puget Soundkeeper Alliance v. EPA***, No. 20-00950 (W.D. Wash.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***S.C. Coastal Conservation League v. Wheeler***, No. 19-03006 (D.S.C.) (challenge to 2019 Repeal Rule)
- ***S.C. Coastal Conservation League v. Wheeler***, No. 20-01687 (D.S.C.) (challenge to Navigable Waters Protection Rule)
- ***Southeast Stormwater Ass'n v. EPA***, No. 15-00579 (N.D. Fla.) (challenge to 2015 Clean Water Rule)
- ***Southeastern Legal Found. v. EPA***, No. 15-02488 (N.D. Ga.) (challenge to 2015 Clean Water Rule)
- ***Texas v. EPA***, No. 15-00162 (S.D. Tex.) (challenge to 2015 Clean Water Rule)
- ***Wash. Cattlemen's Ass'n v. EPA***, No. 19-00569 (W.D. Wash.) (challenge to Navigable Waters Protection Rule, 2019 Repeal Rule, and 2015 Clean Water Rule)
- ***Waterkeeper Alliance v. EPA***, No. 18-03521 (N.D. Cal.) (challenge to Navigable Waters Protection Rule, 2019 Repeal Rule, and 2015 Clean Water Rule)

### 401 Cases

- ***Delaware Riverkeeper v. EPA***, No. 2:20-CV-3412 (E.D. Pa)
- ***South Carolina Coastal Conservation League, et al. v. EPA***, No. 2:20-cv-03062-DCN (D. S.C.)

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<sup>1</sup> *Colorado v. EPA*, No. 20-1238 (10th Cir.) (consolidated appeal of D. Colo. order granting motion for preliminary injunction against the NWPR in the state of Colorado; oral argument was held on November 18, 2020).

## Challenges to Waters of the United States and Section 401 Rules to which NRDC is not a Party

### WOTUS Cases:

- ***Am. Exploration & Mining Ass'n v. EPA***, No. 16-01279 (D.D.C.) (challenge to 2015 Clean Water Rule)
- ***California v. Wheeler***, No. 20-03005 (N.D. Cal.) (challenge to Navigable Waters Protection Rule)
- ***Chesapeake Bay Found. v. Wheeler***, Nos. 20-01063 & 20-01064 (D. Md.) (consolidated cases challenging Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***Colorado v. EPA***, No. 20-01461 (D. Colo.) (challenge to Navigable Waters Protection Rule)<sup>1</sup>
- ***Envtl. Integrity Project v. Wheeler***, No. 20-01734 (D.D.C.) (challenge to Navigable Waters Protection Rule)
- ***Murray v. Wheeler***, No. 19-01498 (N.D.N.Y.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***Navajo Nation v. Wheeler***, No. 20-00602 (D.N.M.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***N.M. Cattle Growers' Ass'n v. EPA***, No. 19-00988 (D.N.M.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***North Dakota v. EPA***, No. 15-00059 (D.N.D.) (challenge to 2015 Clean Water Rule)
- ***Or. Cattlemen's Ass'n v. EPA***, No. 19-00564 (D. Or.) (challenge to Navigable Waters Protection Rule & 2015 Clean Water Rule)
- ***Pascua Yaqui Tribe v. EPA***, No. 20-00266 (D. Ariz.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***Pierce v. EPA***, No. 19-02193 (D. Minn.) (challenge to 2019 Repeal Rule & 2015 Clean Water Rule)
- ***Puget Soundkeeper Alliance v. EPA***, No. 20-00950 (W.D. Wash.) (challenge to Navigable Waters Protection Rule & 2019 Repeal Rule)
- ***S.C. Coastal Conservation League v. Wheeler***, No. 20-01687 (D.S.C.) (challenge to Navigable Waters Protection Rule)
- ***Southeastern Legal Found. v. EPA***, No. 15-02488 (N.D. Ga.) (challenge to 2015 Clean Water Rule)
- ***Wash. Cattlemen's Ass'n v. EPA***, No. 19-00569 (W.D. Wash.) (challenge to Navigable Waters Protection Rule, 2019 Repeal Rule, and 2015 Clean Water Rule)
- ***Waterkeeper Alliance v. EPA***, No. 18-03521 (N.D. Cal.) (challenge to Navigable Waters Protection Rule, 2019 Repeal Rule, and 2015 Clean Water Rule)

### 401 Cases

- ***Delaware Riverkeeper v. EPA***, No. 2:20-CV-3412 (E.D. Pa)
- ***In re CWA Rulemaking***, No. 3:20 cv 00089 (N.D. Cal.)

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<sup>1</sup> *Colorado v. EPA*, No. 20-1238 (10th Cir.) (consolidated appeal of D. Colo. order granting motion for preliminary injunction against the NWPR in the state of Colorado; oral argument was held on November 18, 2020).

Message

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**From:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Sent:** 1/28/2021 1:47:35 PM  
**To:** Payne, James (Jim) [payne.james@epa.gov]  
**Subject:** Fwd: FOLLOWUP - Melissa and Dimple - lists of WOTUS and 401 cases

Jim - see Justina's note which is one she sent you but new section on 401 and WOTUS. So we can discuss almost all of the cases!

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

Begin forwarded message:

**From:** "Fugh, Justina" <Fugh.Justina@epa.gov>  
**Date:** January 28, 2021 at 12:23:00 AM EST  
**To:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Cc:** "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "McConkey, Diane" <Mcconkey.Diane@epa.gov>, "Messier, Dawn" <Messier.Dawn@epa.gov>  
**Subject:** RE: FOLLOWUP - Melissa and Dimple - lists of WOTUS and 401 cases

Hi Steve,

My apologies for not responding to your email. I had sent an email to Jim that I had hoped he would distribute but let me try it out on you guys instead. To navigate recusal issues for Melissa and Dimple, here is the process for Associates to follow: :

- 1) Review the list of cases from which Melissa, Dimple [and the additional incoming Deputy, arriving on Monday, 2/1] are recused
  - a. If the case is on their list, then do not discuss with that principal
  - b. If the case is not on their list, proceed to step 2.
- 2) Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
  - a. If yes, then do not discuss with that principal
    - i. <!--[if !supportLists]--><!--[endif]-->Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven't yet done so.
  - b. If no, then you may discuss with that principal.
- 3) If the former employer files an *amicus* brief, then
  - a. Ascertain whether Melissa or Dimple worked on that brief.
    - i. <!--[if !supportLists]--><!--[endif]-->If yes, then do not discuss
    - ii. <!--[if !supportLists]--><!--[endif]-->If not, then:

1. Do not discuss that brief with Melissa until after January 20, 2022 (unless OGC/Ethics advises otherwise)
2. Do not discuss that brief with Dimple until after January 20, 2023

Turning to your lists:

- Challenges to WOTUS and Section 401 Rules to which MA is NOT a party:
  - Applying the regimen above, you may discuss all of the cases on that list with Melissa *except Conservation Law Found. V. EPA*, No. 20-10820 (D. Mass.) (challenge to Navigable Waters Protection Rule). Because MA filed an *amicus* brief, you have to work through Step 3.
- Challenges to WOTUS and Section 401 Rules to which NRDC is NOT a party:
  - Applying the regimen above, you may discuss all of the cases on that list with Dimple.

I hope this is helpful and again, sorry for not getting it you earlier.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Wednesday, January 27, 2021 8:52 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>  
**Subject:** FOLLOWUP - Melissa and Dimple - lists of WOTUS and 401 cases  
**Importance:** High

Hi Justina – I'm following up from my email from yesterday below. Can you give me a sense of your timing for next steps we previously discussed (sharing a draft email described below)? Thanks so much for your help!

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

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**From:** Neugeboren, Steven  
**Sent:** Tuesday, January 26, 2021 5:19 PM  
**To:** Justina Fugh <Fugh.Justina@epa.gov>  
**Cc:** Carrie Wehling <Wehling.Carrie@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Dawn Messier <Messier.Dawn@epa.gov>

**Subject:** Melissa and Dimple - lists of WOTUS and 401 cases

**Importance:** High

Justina – Per our conversation yesterday, I'm sending you the two attached documents

1. A list of challenges to regulations defining waters of the United States and the CWA 401 rules to which the State of Mass is not a party, and
2. A list of challenges to those rules to which NRDC is not a party.

You indicated on our call that you would send list #1 to Melissa, and list #2 to Dimple indicating that they may participate in the cases on those lists.

You also indicated you would send me a draft of your email you intend to send so I could take a quick look first.

Thanks so much for all of your help on this! We have briefing papers due to them by COB tomorrow for Thursday's hot issues meeting which we would like to address some of these cases if at all possible, so I'm hoping we could get the communication completed/clearance for their participation by tomorrow morning.

Thanks again and please give me a call if you have any questions.

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

Message

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**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 1/28/2021 5:24:33 PM  
**To:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**CC:** Payne, James (Jim) [payne.james@epa.gov]; OGC WLO MGMT [OGC\_WLO\_MGMT@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; ODea, Elise [odea.elise@epa.gov]  
**Subject:** RE: Melissa will followup with you on wotus/401 cases  
**Attachments:** RE: WOTUS Cases

Ha! I already took care of it. See attached. I'll do a similar writing for Dimple, but she belongs to a different bar so that analysis is different.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:14 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; ODea, Elise <odea.elise@epa.gov>  
**Subject:** Melissa will followup with you on wotus/401 cases

Justina – At our hot issues today, we conveyed orally your advice her and Dimple's ability to participate at this time in WOTUS and 401 cases to which their Mass and NRDC are not parties nor filed as amicus which you sent to us this morning (I've pasted below and highlighted the most relevant part). She said she wanted to hold off discussing those until she has something in writing from you.

We are on her calendar for followup at 12:30 tomorrow so could you please connect with her to convey your advice so she is comfortable discussing the matter at that time?

Please let me know if you have any questions and thanks again for all your support in this busy time.

- 1) Review the list of cases from which Melissa, Dimple [and the additional incoming Deputy, arriving on Monday, 2/1] are recused
  - a. If the case is on their list, then do not discuss with that principal
  - b. If the case is not on their list, proceed to step 2.
- 2) Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
  - a. If yes, then do not discuss with that principal
    - i. Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven't yet done so.
  - b. If no, then you may discuss with that principal.

- 3) If the former employer files an *amicus* brief, then
  - a. Ascertain whether Melissa or Dimple worked on that brief.
    - i. If yes, then do not discuss
    - ii. If not, then:
      1. Do not discuss that brief with Melissa until after January 20, 2022 (unless OGC/Ethics advises otherwise)
      2. Do not discuss that brief with Dimple until after January 20, 2023

Turning to your lists:

- Challenges to WOTUS and Section 401 Rules to which MA is NOT a party:
  - Applying the regimen above, you may discuss all of the cases on that list with Melissa *except Conservation Law Found. V. EPA*, No. 20-10820 (D. Mass.) (challenge to Navigable Waters Protection Rule). Because MA filed an *amicus* brief, you have to work through Step 3.
- Challenges to WOTUS and Section 401 Rules to which NRDC is NOT a party:
  - Applying the regimen above, you may discuss all of the cases on that list with Dimple.

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

Message

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**From:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Sent:** 1/28/2021 5:31:06 PM  
**To:** Hoffer, Melissa [Hoffer.Melissa@epa.gov]  
**CC:** Payne, James (Jim) [payne.james@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]  
**Subject:** RE: WOTUS Cases

Thank you!

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

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**From:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:29 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** FW: WOTUS Cases

Steve—all set and for your records.

Melissa

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Sent:** Thursday, January 28, 2021 11:00 AM  
**To:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>  
**Subject:** RE: WOTUS Cases

Hi Melissa,

This note confirms for you that, for the purposes of the federal ethics rules, you may participate personally and substantially on behalf of EPA in the cases identified in the attached list with the exception of *Conservation Law Found. V. EPA*, No. 20-10820 (D. Mass.) in which MA filed an *amicus* brief, pending clarification of any prior participation by you. See step 3 of the draft process below. Your former employer/client is not a party to any of them so you did not work personally and substantially on those specific party matters.

I looked up the Massachusetts bar rule 1.11 that applies special conflicts of interest rules for former and current government officers and employees. Unlike the ABA model rules and the DC Bar rule, Massachusetts focuses on the same specific party matter that the former government official participated in personally and substantially. It does not use the vexing phrase “same or *substantially related* specific party matter.” Therefore, I don’t see that you will have a bar restriction either. You may participate in the cases on the attached list fully.

I created a process flowchart for the Associates to follow that Jim is currently reviewing. But Steve Neugeboren needed some advice this week, so I sent him the process already, which is this:

- 1) Review the list of cases from which Melissa and Dimple are recused
  - a. If the case is on their list, then do not discuss with that principal
  - b. If the case is not on their list, proceed to step 2.
- 2) Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
  - a. If yes, then do not discuss with that principal
    - i. Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven't yet done so.
  - b. If no, then you may discuss with that principal.
- 3) If the former employer files an *amicus* brief, then
  - a. Ascertain whether Melissa or Dimple worked on that brief.
    - i. If yes, then do not discuss
    - ii. If not, then:
      1. Do not discuss that brief with Melissa until after January 20, 2022 (unless OGC/Ethics advises otherwise)
      2. Do not discuss that brief with Dimple until after January 20, 2023

I am currently reviewing a draft of the impartiality determination to allow you to work on *new* specific party matters involving Massachusetts. And I'm going to ask some talented people on my team to create a cool pictorial flow chart to capture the process laid out narratively above. Hope this helps,  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Hoffer, Melissa <[Hoffer.Melissa@epa.gov](mailto:Hoffer.Melissa@epa.gov)>  
**Sent:** Thursday, January 28, 2021 10:30 AM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Cc:** Payne, James (Jim) <[payne.james@epa.gov](mailto:payne.james@epa.gov)>  
**Subject:** WOTUS Cases  
**Importance:** High

Hi Justina,

As you know, the Commonwealth of Massachusetts is a party to several cases challenging the WOTUS rule. I understand from Steve N that you have advised that, with respect to the pending litigation concerning WOTUS that the Commonwealth of Massachusetts is **\*not\*** a party to, I am permitted to participate in litigation strategy decisions. Before I do that, I wanted to confirm that accurately reflects your advice, and request that you provide a confirmatory email before I proceed.

Thank you,  
Melissa

Message

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**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 1/28/2021 5:44:55 PM  
**To:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**CC:** Payne, James (Jim) [payne.james@epa.gov]; OGC WLO MGMT [OGC\_WLO\_MGMT@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; ODea, Elise [odea.elise@epa.gov]  
**Subject:** RE: Melissa will followup with you on wotus/401 cases

Dimple's situation is different from Melissa's because I have to consider the Biden pledge (inapplicable to Melissa), and I think she belongs to the DC Bar, which has a very restrictive rule 1.11. I need to confirm her bar admission but I should be able to write to her today (so long you consider that my end of the day is pretty late).

Justina

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:38 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; ODea, Elise <odea.elise@epa.gov>  
**Subject:** RE: Melissa will followup with you on wotus/401 cases

Fantastic. Thank you! Dimple is scheduled to be in our meeting at 1230 as well tomorrow so do you think you will have something to her by then? (apologies if I jumped the gun but I took your note to mean they were similarly situated, so look forward to hearing result of your further analysis).

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:25 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; ODea, Elise <odea.elise@epa.gov>  
**Subject:** RE: Melissa will followup with you on wotus/401 cases

Ha! I already took care of it. See attached. I'll do a similar writing for Dimple, but she belongs to a different bar so that analysis is different.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:14 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Cc:** Payne, James (Jim) <payne.james@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; ODea, Elise <odea.elise@epa.gov>  
**Subject:** Melissa will followup with you on wotus/401 cases

Justina – At our hot issues today, we conveyed orally your advice her and Dimple’s ability to participate at this time in WOTUS and 401 cases to which their Mass and NRDC are not parties nor filed as amicus which you sent to us this morning (I’ve pasted below and highlighted the most relevant part). She said she wanted to hold off discussing those until she has something in writing from you.

We are on her calendar for followup at 12:30 tomorrow so could you please connect with her to convey your advice so she is comfortable discussing the matter at that time?

Please let me know if you have any questions and thanks again for all your support in this busy time.

- 1) Review the list of cases from which Melissa, Dimple [and the additional incoming Deputy, arriving on Monday, 2/1] are recused
  - a. If the case is on their list, then do not discuss with that principal
  - b. If the case is not on their list, proceed to step 2.
- 2) Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
  - a. If yes, then do not discuss with that principal
    - i. Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven’t yet done so.
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  - a. Ascertain whether Melissa or Dimple worked on that brief.
    - i. If yes, then do not discuss
    - ii. If not, then:
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Turning to your lists:

- Challenges to WOTUS and Section 401 Rules to which MA is NOT a party:
  - Applying the regimen above, you may discuss all of the cases on that list with Melissa *except* *Conservation Law Found. V. EPA*, No. 20-10820 (D. Mass.) (challenge to Navigable Waters Protection Rule). Because MA filed an *amicus* brief, you have to work through Step 3.
- Challenges to WOTUS and Section 401 Rules to which NRDC is NOT a party:
  - Applying the regimen above, you may discuss all of the cases on that list with Dimple.

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Maildcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

Message

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**From:** Simons, Andrew [Simons.Andrew@epa.gov]  
**Sent:** 2/2/2021 2:06:24 PM  
**To:** Fugh, Justina [Fugh.Justina@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]  
**Subject:** RE: Transparency in Science recusal question

The flow chart is very helpful. I hadn't seen that before. Thanks.

Andrew Simons  
Acting Associate General Counsel  
Cross-Cutting Issues Law Office  
U.S. Environmental Protection Agency  
Tel. 202-564-3649  
WJC-N 7526E

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Please consider the environment before printing this email.

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**From:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Sent:** Monday, February 1, 2021 11:50 PM  
**To:** Payne, James (Jim) <payne.james@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>  
**Subject:** RE: Transparency in Science recusal question

Hi there

Sadly, Justina can neither confirm nor deny because she has no idea what you're talking about. I don't know what case this is or who the parties or intervenors are. What I sent forward to Jim is the analytical flow chart for the Associates to apply to determine whether or not they should be recused:

- 1) Review the list of cases from which Melissa and Dimple are recused
  - a. If the case is on their list, then do not discuss with that principal
  - b. If the case is not on their list, proceed to step 2.
- 2) Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
  - a. If yes, then do not discuss with that principal
    - i. Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven't yet done so.
  - b. If no, then you may discuss with that principal.
- 3) If the former employer files an *amicus* brief, then
  - a. Ascertain whether Melissa or Dimple worked on that brief.
    - i. If yes, then do not discuss
    - ii. If not, then:
      1. Do not discuss that brief with Melissa until after January 20, 2022 (unless OGC/Ethics advises otherwise)
      2. Do not discuss that brief with Dimple until after January 20, 2023

Sigh.  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Payne, James (Jim) <payne.james@epa.gov>  
**Sent:** Monday, February 01, 2021 6:21 PM  
**To:** Simons, Andrew <Simons.Andrew@epa.gov>  
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** RE: Transparency in Science recusal question

My understanding is that recusals are to both Montana and SDNY cases that challenged this rule.

Justina can confirm – my understanding is that there would not be recusals for a future rulemaking on this subject, including a rescission rulemaking to remove this challenged rule from the CFR.

---

**From:** Simons, Andrew <Simons.Andrew@epa.gov>  
**Sent:** Monday, February 1, 2021 5:50 PM  
**To:** Payne, James (Jim) <payne.james@epa.gov>  
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** Transparency in Science recusal question

Now that the Court has vacated and remanded the rule to EPA, are Melissa and Dimple recused from next steps?

We have another case in SDNY challenging the rule, and we will need to figure out next steps in that litigation – and I'm assuming Dimple and perhaps Melissa (depending on the policy distinction) are still recused from that (but please let me know if that's different).

So what I'm really interested in is whether they are recused from the "final rule" that we will issue implementing the vacatur decision, i.e., that will remove it from the CFR.

Andrew Simons  
Acting Associate General Counsel  
Cross-Cutting Issues Law Office  
U.S. Environmental Protection Agency  
Tel. 202-564-3649  
WJC-N 7526E

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Please consider the environment before printing this email.

Message

**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 3/31/2021 5:45:11 AM  
**To:** Payne, James (Jim) [payne.james@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]  
**Subject:** (b) (5)

Hi Jim and Joe,

I've been thinking about this situation, and I'm impressed that our political deputies are so very careful!

Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

As soon as Marianne realized that NRDC had intervened in this case – which is buried in the decision – she disqualified herself and has ceased participating. That is exactly what she should do.

As you know, OGC/Ethics has proposed seeking a pledge waiver to allow Marianne to work on specific party matters in which NRDC is involved, provided she did not previously participate herself. We have drafted that pledge waiver and sent it to Marianne for her technical review of the facts. Once we incorporate any comments she may have, I'll send it to you, Jim, and to the White House. With any luck, we will soon be able to allow Marianne to participate in this sort of situation.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>  
**Sent:** Tuesday, March 30, 2021 3:49 PM  
**To:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>  
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>  
**Subject:** Ex. 5 Deliberative Process (DP)

Melissa,

This email is intended to bring an issue that came up in PTSLO to your attention for review and decision. As described below, I should have been recused from involvement in this matter.

As described in the email chain below,

**Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

I'm also cc'ing Justina so that she's aware of the oversight.

Sorry I didn't catch this earlier.

## Ex. 5 Deliberative Process (DP)

Thanks,

Marianne

---

**From:** Huskey, Angela <Huskey.Angela@epa.gov>

**Sent:** Friday, March 26, 2021 5:43 PM

**To:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

**Subject:** Ex. 5 Deliberative Process (DP)

Yes, of course. So sorry for not including that in this round.

---

**From:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

**Sent:** Friday, March 26, 2021 4:20 PM

**To:** Huskey, Angela <Huskey.Angela@epa.gov>

**Subject:** (b) (5)

Angela,

Many thanks.

Can you send me a copy of the decision?

Thanks,

Marianne

---

**From:** Huskey, Angela <Huskey.Angela@epa.gov>

**Sent:** Friday, March 26, 2021 3:51 PM

**To:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>

**Cc:** Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>

**Subject:** RE: Ex. 5 Deliberative Process (DP)

Hi all,

# Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Thanks,  
Angela

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**From:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>  
**Sent:** Thursday, March 25, 2021 9:15 AM  
**To:** Payne, James (Jim) <payne.james@epa.gov>  
**Cc:** Koch, Erin <Koch.Erin@epa.gov>; Huskey, Angela <Huskey.Angela@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>  
**Subject:** Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Best,

Marianne

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**From:** Payne, James (Jim) <payne.james@epa.gov>  
**Sent:** Thursday, March 25, 2021 12:09 AM  
**To:** Huskey, Angela <Huskey.Angela@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>  
**Cc:** Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>  
**Subject:** Ex. 5 Deliberative Process (DP)

Hi. Ex. 6 Personal Privacy (PP) Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Mar 19, 2021, at 3:03 PM, Huskey, Angela <Huskey.Angela@epa.gov> wrote:

Hi Marianne and Jim,

## Ex. 5 Deliberative Process (DP)

## **Ex. 5 Deliberative Process (DP)**

Angela

Message

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**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 4/2/2021 7:58:11 PM  
**To:** ethics; Ex. 6 Personal Privacy (PP)  
**CC:** Payne, James (Jim) [payne.james@epa.gov]  
**Subject:** Pledge Waiver -- from EPA for Marianne Engelman-Lado  
**Attachments:** request for pledge waiver for Marianne Engelman-Lado\_.docx

Hi there,

My name is Justina Fugh, and I'm the ADAEO at EPA. On behalf of EPA and Jim Payne, the Designated Agency Ethics Official, I am writing to request consultation on the attached pledge waiver for Marianne Engelman-Lado, a political appointee in the Office of General Counsel. Ms. Engelman-Lado had previously worked, in a limited scope, with the Natural Resources Defense Council, on a handful of FOIA requests. Although NRDC technically meets the definition of a "former client" for the purposes of Section 1, paragraph 2 of Executive Order 13989, EPA seeks a waiver on her behalf to further a public interest.

As you will see from the attached document, Ms. Engelman-Lado's previous interaction with NRDC was limited to FOIA requests sent to EPA in the context of Title VI of the Civil Rights Act. We seek to allow her to participate in specific party matters arising under environmental statutes, such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). We understand that, if you concur, we will need to post this waiver on the Agency's website within 10 business days and to notify the Office of Government Ethics.

If you have any questions regarding this waiver, please let me know.

Thank you for your prompt consideration,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772